

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Replacement of Part 90 by Part 88 to)
Revise the Private Land Mobile Radio)
Services and Modify the Policies)
Governing Them)

PR Docket No. 92-235

and)

Examination of Exclusivity and)
Frequency Assignment Policies of)
the Private Land Mobile Radio Services)

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To: The Commission

REPLY COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

Industrial Telecommunications
Association, Inc.

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S U M M A R Y

The Industrial Telecommunications Association, Inc. ("ITA") is enthusiastically supportive of the transition plan proposed by LMCC to promote the timely introduction of more efficient technologies. ITA believes it is important to have a defined time table for the conversion to narrower channelization equipment, along the lines that LMCC proposed in its comments.

ITA also agrees with LMCC that it is essential to allow the licensees of existing 450-470 MHz offset operations the option of gaining primary status for their systems. ITA supports the process outlined in LMCC's comments to permit the re-licensing of existing low power offset operations in the 450-470 MHz band for primary operations.

Regarding the economic incentives proposed by the Commission, ITA agrees with Motorola's comments that the auctioning of geographically-defined overlay licenses would shift the focus of the refarming bands away from internal use systems to carrier-provided operations and cause great damage to this nation's infrastructure industries.

Motorola believes that the introduction of overlay licenses, auctions, and resale of excess capacity would alter the

fundamental character of the private services. ITA agrees completely with Motorola on this point. ITA also believes, as Motorola states, that users who require protection for the deployment of advanced technologies should rely on the existing coordination process rather than an overlay licensing scheme that is of dubious benefit. ITA urges the Commission to recognize that concepts which may be useful for regulating common carriers are generally not appropriate in the context of the private services.

Finally, ITA believes that spectrum lease fees are inevitable. ITA believes that spectrum lease fees, if applied in the proper manner, will help to promote the introduction of more efficient technologies. However, any spectrum lease fees that are established must be at a level that is appropriate for the purpose intended.

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REPLY COMMENTS
OF THE
INDUSTRIAL TELECOMMUNICATIONS ASSOCIATION, INC.

The Industrial Telecommunications Association, Inc. ("ITA") respectfully submits the following Reply Comments in the above-referenced proceeding. These Reply Comments address various positions taken and points raised by the parties that responded to the proposal portion of the Report and Order and Further Notice of Proposed Rule Making in this proceeding.¹

¹ Report and Order and Further Notice of Proposed Rule Making (FCC 95-255), adopted June 15, 1995 [hereinafter referred to as "the decision" or "the June 15, 1995 decision"]. A summary of this decision appeared in the Federal Register dated July 19, 1995. (See 60 Fed. Reg. 37,148.) The full text of the decision appears at 10 FCC Rcd. 10076 (1995).

I. BACKGROUND

1. The Report and Order portion of the Report and Order and Further Notice of Proposed Rule Making implements the Commission's broad policy to encourage more efficient use of private land mobile radio spectrum. To that end, the Report and Order adopts a narrowband channel plan which ultimately will require private land mobile radio users to implement narrowband or equivalent spectrum-efficient technology in the 150-174 MHz and 421-430, 450-470, and 470-512 MHz bands.

2. In the Further Notice portion of the decision, the Commission requested comment on various economic-based approaches to regulation of the spectrum under consideration in the instant proceeding. The intent of the Further Notice was to explore "methods to promote more efficient and effective use of the PLMR bands below 800 MHz."² Specifically, the Further Notice looked to market-based incentives such as spectrum lease fees and auctions as a means of promoting more efficient use of the frequency bands below 800 MHz.

II. REPLY COMMENTS

3. The comments filed in this proceeding address a diverse range of issues and concerns. The scope of the comments fall

² Report and Order and Further Notice of Proposed Rule Making, paragraph 110.

roughly into two main areas of concern: (1) technical and operational issues; and (2) economic incentives. In these Reply Comments, ITA will focus, first, on the technical and operational issues raised by the parties filing comments and subsequently will address issues relating to economic incentives.

Technical and Operational Issues

4. ITA was pleased to see the Land Mobile Communications Council ("LMCC") take such an active interest in measures to ensure the timely introduction of more efficient technologies. ITA participated in LMCC's deliberations regarding the transition to narrower channelization and is enthusiastically supportive of LMCC's proposed transition plan.

5. Some parties such as Forest Industries Telecommunications ("FIT") would prefer a transition plan that is essentially voluntary in nature. FIT opposes any compulsory timetable for the conversion to narrower channelization.³ FIT would require only new applicants to use equipment designed to operate on narrower channelization. FIT expresses the view that the need for additional communications capacity, the increasing cost of maintaining existing equipment and anticipated decreases in the cost of narrower channelization equipment will provide sufficient incentives for existing licensees to convert to more

³ FIT comments, page 10.

efficient technologies.

6. ITA disagrees with FIT's view on this issue. ITA believes it is important to have a defined time table for the conversion to narrower channelization equipment, along the lines that LMCC proposed in its comments. The difficulty with a voluntary transition plan is that a licensee's intention to convert to narrower channelization will often be undermined by economic factors. In the short-term, it is financially beneficial for a licensee to continue to use existing equipment even when other, more long-term objectives would be better served by converting to narrower channelization. Stated another way, short-term financial considerations create a strong incentive for licensees to defer the conversion to narrower channelization.

7. The available history provides support for mandatory, rather than voluntary, implementation of more efficient technologies. In 1956, the Commission adopted a Report and Order that rechannelized the 25-50 MHz band from 40 kilohertz channels to 20 kilohertz channels.⁴ For both existing and new systems, the use of 20 kilohertz channelization was voluntary. One year later, the Commission revisited this issue and found it necessary

⁴ In re Amendment of the Rules to Reduce the Separation Between Assignable Frequencies in the 25-50 Mc. and 152-162 Mc. Bands, Report and Order, Docket No. 11253, 39 F.C.C. 487 (1956).

to make the use of 20 kilohertz equipment mandatory.⁵ The Commission found that the voluntary nature of the earlier decision was at odds with the goal of fostering more efficient use of the spectrum.

8. To facilitate the transition process, LMCC recommended in its comments that the Commission adopt specific deadlines for the implementation of more efficient equipment. LMCC proposed that these deadlines apply to the UHF bands (421-430 MHz, 450-470 MHz and 470-512 MHz) as well as the VHF (150-174 MHz) band. Under LMCC's plan, all applications filed on or after September 1, 1996 for new systems would have to declare the use of 12.5 kHz or equivalent spectrum efficiency. Also, effective September 1, 2005, for all markets designated as frequency-congested by the frequency advisory committees, secondary status would be conferred on all licensees authorized to use the current channels who have not converted to 12.5 kHz channelization or equivalent spectrum efficiency. ITA is strongly supportive of this facet of LMCC's proposal.

9. LMCC has also formulated a plan to allow the licensees of existing 450-470 MHz offset operations to attain primary status. ITA agrees with LMCC that providing offset users with an option for converting their systems to primary status is critical

⁵ Second Report and Order, Docket No. 11253, 39 F.C.C. 509, 510 (1957).

to protecting such systems from interference that might be caused by primary systems operating on adjacent or co-channels.

Therefore, ITA supports the process outlined in LMCC's comments to permit the re-licensing of existing low power offset operations in the 450-470 MHz band for primary operations. As Hewlett-Packard has noted in its comments, systems operating on the offset channels transmit communications that are essential to the operation of hospitals, petroleum refineries, and a variety of other critical systems.

Issues Relating to Economic Incentives

10. ITA notes that, with respect to the proposed economic incentives, there are some consistently recurring themes in many of the comments filed. Motorola has observed that most of the economic alternatives described in the Further Notice are inappropriate mechanisms for the frequency bands under consideration. ITA finds Motorola's logic to be compelling. Motorola fears that the auctioning of geographically-defined overlay licenses would "shift the focus of the refarming bands away from internal use systems to carrier-provided operations and cause great damage to this nation's infrastructure industries."⁶

11. In Motorola's view, the introduction of overlay licenses, auctions, and resale of excess capacity would alter the

⁶ Motorola comments, page 3 (emphasis added).

fundamental character of the private services. Motorola neither welcomes nor supports such a change. Further, Motorola believes users who require protection for the deployment of advanced technologies should rely on the existing coordination process rather than an overlay licensing scheme that is of dubious benefit. The economic attraction of auctions, Motorola contends, would not offset the damage that would result from the effort to dramatically recast the nature of the private services.

12. In a similar vein, Hewlett-Packard states that exclusive-use licensing over broad geographic areas are relevant considerations for commercial mobile communications systems but not for private mobile radio systems.⁷ ITA agrees with Motorola and Hewlett-Packard on these points. There is a well-established distinction between private mobile services and common carrier services. Concepts that may be useful for regulating common carriers are generally not appropriate in the context of the private services. The FCC must recognize the abundant public benefits that flow from the use of the private wireless spectrum and craft inducements that are appropriate to this industry.

13. ITA urges the Commission to be particularly sensitive to the distinctions drawn by Motorola, Hewlett-Packard and others. Geographic overlay licenses and auctions are a distinct creature of the common carrier services. Auctioning of

⁷ Hewlett-Packard Company comments, page 3.

geographic overlay licenses is not an appropriate licensing mechanism in the private services. As Motorola succinctly states, "refarming must meet the needs of private wireless users."⁸

14. In its comments, LMCC states that it does not believe spectrum use or spectrum lease fees will provide a compelling inducement for users to convert to more efficient technologies. It is ITA's view that spectrum lease fees are inevitable. And, if applied in the proper manner, ITA believes that spectrum lease fees will help to promote the introduction of more efficient technologies. Moreover, spectrum lease fees will encourage licensees to design systems that truly conform to their system requirements. Weyerhaeuser Company, among others, agrees with ITA on this point. Weyerhaeuser supports the introduction of spectrum lease fees because they are easy to understand and administer and can be tied directly to the amount of spectrum used.⁹

15. From ITA's perspective, the Commission must strive to make sure that the spectrum lease fees are established at a level that is appropriate for the purpose intended. The spectrum lease fees cannot be so high that they dissuade the private wireless

⁸ Motorola comments, page 4.

⁹ Weyerhaeuser Company comments, page 6.

entities from using the radio spectrum. Nor can the fees be so low as to be insignificant and thereby fail to provide the intended economic inducements. If spectrum fees are to function as a mechanism for stimulating efficient use of the spectrum, they must provide incentive for users to conserve on the bandwidth and number of channels actually used.

16. ITA offers two recommendations for the Commission's consideration. First, ITA urges that if spectrum lease fees are to be implemented, it must be done pursuant to appropriate legislative authority. This legislative authority must provide sufficient latitude for the Commission to craft the fees in such a way that they do serve as an incentive to conserve spectrum. Second, ITA believes it would be appropriate and useful for the Commission to establish an industry advisory committee to recommend the appropriate monetary amounts and computation methodology for the fees. Should the Commission pursue the idea of an industry committee, ITA would be pleased to participate in the effort.

Other Matters

17. As a final point, ITA heartily endorses Motorola's observations regarding enforcement issues and the responsibility of frequency coordinators. Appropriate enforcement authority for the frequency coordinators is pivotal to the success of the

entire refarming effort.

18. Motorola states that the spectrum refarming proceeding depends, ultimately, on the ability of the frequency coordinators to provide authoritative recommendations on channel assignments. For this reason, Motorola encourages the Commission to ensure that the certified frequency coordinators have adequate authority to protect systems from new users based on co-channel and adjacent channel assignment criteria.¹⁰ "Motorola thus supports an expanded role for the coordinators as opposed to codified exclusivity policies based on simplified mileage separations."¹¹

19. ITA strongly agrees with Motorola on this point. Increasingly, the certified frequency coordinators and the Commission will have to function as integrally-related partners with respect to the implementation of more efficient technologies in the land mobile arena. To fulfill this role properly, the certified coordinators must have enhanced authority to establish and apply sound spectrum management policies. When the coordinators identify the appropriate co-channel and adjacent channel separations to be applied in specific cases, they must have confidence that the Commission will support their determination.

¹⁰ Motorola comments, pages 11-12.

¹¹ Motorola comments, page 12.

III. CONCLUSION

20. ITA believes that the specific deadlines proposed by LMCC for conversion to narrower channelization must be established to assist the transition process. ITA also urges that measures be implemented, along the lines recommended by LMCC, to allow the licensees of existing low power offset operations to adequately protect their communications systems.

21. ITA strongly opposes the use of spectrum auctions as a measure to induce users to employ more efficient technologies. ITA believes that spectrum lease fees represent a useful device for promoting more efficient spectrum utilization, provided that there is an appropriate legislative foundation. If the Commission does plan to implement spectrum lease fees, ITA recommends that it establish an industry advisory committee to determine the appropriate monetary amounts and computation methodology for the fees.

22. Finally, ITA firmly believes that the Commission must take positive steps to vest the certified frequency coordinators with an appropriate level of authority for enforcing the refarming decisions. As Motorola has noted, it is imperative that the coordinators have adequate authority to protect systems from new users based on co-channel and adjacent channel assignment criteria.

WHEREFORE, THE PREMISES CONSIDERED, the Industrial Telecommunications Association, Inc. respectfully urges the Federal Communications Commission to act in accordance with the comments and conclusions expressed herein.

Respectfully submitted,

**INDUSTRIAL TELECOMMUNICATIONS
ASSOCIATION, INC.**

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Dated: January 16, 1996